



May 4, 1999

Ms. Linda Cloud
Executive Director
Texas Lottery Commission
P.O. Box 16630
Austin, Texas 78761-6630

OR99-1212

Dear Ms Cloud:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 125002.

The Texas Lottery Commission (the "commission") received a request for information relating to a certain commission investigation of Longhorn Bingo Corral. You advise that you have made available to the requestor much of the information responsive to the request. However, you seek to withhold portions of the responsive information under the informer's privilege aspect of section 552.101 of the Government Code.

Section 552.101 protects, *inter alia*, information made confidential by judicial decision. The informer's privilege has been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). In *Roviaro v. United States*, 353 U.S. 53, 59 (1957), the United States Supreme Court explained the rationale that underlies the informer's privilege:

What is usually referred to as the informer's privilege is in reality the Government's privilege to withhold from disclosure the identity of persons who furnish information of *violations of law to officers charged with enforcement of that law*. [Citations omitted.] The purpose of the privilege is the furtherance and protection of the public interest in effective law enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law-enforcement officials and, *by preserving their anonymity*, encourages them to perform that obligation. [Emphasis added.]

The "informer's privilege" aspect of section 552.101 protects the identity of persons who report violations of the law. When information does not describe conduct that violates the

law, the informer's privilege does not apply. Open Records Decision Nos. 515 (1988) 191 (1978). Although the privilege ordinarily applies to the efforts of law enforcement agencies, it can apply to administrative officials with a duty of enforcing particular laws. Attorney General Opinion MW-575 (1982); Open Records Decision Nos. 285 (1981), 279 *see also* Open Records Decision No. 208 (1978). This may include enforcement of quasi-criminal civil laws. Open Records Decision Nos. 515 (1988) 391 (1983). Because part of the purpose of the privilege is to prevent retaliation against informants, the privilege does not apply when the informant's identity is known to the individual who is the subject of the complaint. *See* Open Records Decision No. 208 (1978).

Having reviewed your arguments and the information at issue, we conclude that you may withhold those portions of the responsive information you have marked under the informer's privilege aspect of section 552.101. The remaining portions of the responsive information must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



William Walker
Assistant Attorney General
Open Records Division

WMW/eaf

Ref.: ID# 125002

encl: Submitted documents

cc: Mr. Eric Cook
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Garland, Texas 75042
(w/o enclosures)